



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,246	07/18/2003	Milind Rajopadhye	BMS-2288(DM-6958-A)	3130
46339	7590	01/07/2005	EXAMINER	
BRISTOL - MYERS SQUIBB COMPANY			JONES, DAMERON L	
PO BOX 4000			ART UNIT	
PRINCETON, NJ 08543-4000			PAPER NUMBER	

1616

DATE MAILED: 01/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/622,246

Applicant(s)

RAJOPADHYE ET AL.

Examiner

D. L. Jones

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 4/12/04; 1/5/04; 7/18/03; & 10/12/04.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 52-58 and 66-83 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 52-58 and 66-83 (in part) is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4/14/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Art Unit: 1616

ACKNOWLEDGMENTS

1. The Examiner acknowledges receipt of the following: (1) the preliminary amendment filed 1/5/04 wherein pages 1-89 of the sequence listing were submitted; (2) the preliminary amendment filed 7/18/03 wherein the specification was amended; claims 1-51 were canceled; claims 52, 53, 56, 57, 58, and 67-69 were amended; claims 59-65 were canceled; and claims 70-83 were added.'

Note: Claims 52-58 and 66-83 are pending.

APPLICANT'S INVENTION

2. Applicant's invention is directed to compositions, kits, and uses thereof comprising a peptide/peptidomimetic targeting moiety that binds to the $\alpha_5\beta_1$, a chelator, optionally, a linking group, at least one chemotherapeutic agent or radiosensitizer agent, and a pharmaceutically acceptable carrier.

RESPONSE TO APPLICANT'S ELECTION

3. Applicant's election with traverse of Group I and the species wherein the chemotherapeutic agent is gemcitabine and the radiopharmaceutical (as set forth in Applicant's response filed 10/12/04, page 2), filed 10/12/04, is acknowledged. The traversal is on the ground(s) that the search is not a serious burden to the Examiner even if multiple inventions are present. This is found non-persuasive because a chemotherapeutic agent is different from a radiosensitizing agent. As a result, prior art that anticipates or renders a chemotherapeutic agent obvious would neither anticipate nor render obvious a radiosensitizing agent. Hence, the restriction requirement is still deemed proper and is therefore made FINAL.

Art Unit: 1616

EX PARTE QUAYLE

4. This application is in condition for allowance except for the following formal matters:

Applicant needs to cancel all non-elected subject matter.

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

ALLOWABLE CLAIMS

5. Claims 52-58 and 66-83 are allowable over the prior art (in part) as they are directed to a composition, kit, and method of treating cancer comprising a peptide/peptidomimetic that binds to a $\alpha_5\beta_1$ receptor, a chelator, optionally, a linking group, at least one chemotherapeutic agent or radiosensitizer agent, and a pharmaceutically acceptable carrier. The closest art is Applicant's own work which differs in that it is directed to a non-peptide or a different receptor peptide than that set forth in the instant invention.

COMMENTS/NOTES

6. The lined through document(s) appearing on the information disclosure statement and not considered were not present in the application during examination. It is duly noted that on the information disclosure statement it is stated that some of the documents would not be forwarded to the U.S. Patent and Trademark Office since they are believed to be too voluminous.


Art Unit: 1616

7. While the Examiner has made every effort to review cases wherein there may be overlapping subject matter, it is possible that an oversight may have been made. Thus, it is respectfully requested that if Applicant knows of applications containing overlapping subject matter, they be brought to the attention of the Examiner.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. L. Jones whose telephone number is (571) 272-0617. The examiner can normally be reached on Mon.-Fri., 6:45 a.m. - 3:15 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz can be reached on (571) 272-0887. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


D. L. Jones
Primary Examiner
Art Unit 1616

January 6, 2005